SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/30/2002 CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES P. M. Espinoza
Deputy

LC 2001-000760

FILED: _____

GREGORY SCOTT MASON MARK S WILLIAMS

v.

STATE OF ARIZONA CARRIE M COLE

REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. 1439798; 1439799X

Charge: 1. DUI
2. BAC OVER .10
3. IMPRUDENT SPEED
4. FAILURE TO DRIVE IN A SINGLE LANE
5. FAILURE TO SIGNAL LANE CHANGE

EXTREME DUI

DOB: 01/30/60

DOC: 11/27/99

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial court and the memoranda submitted by counsel.

The only issue presented is whether a phlebotomist who is not supervised by a physician (as medical assistants are required under A.R.S. Section 32-1456(A)) is a "qualified person within the meaning of A.R.S. Section 28-1388(A)" authorized to perform a blood draw to test for blood-alcohol content. Appellant asserts that the trial judge erred in granting Appellee's Motion to Suppress the results of the blood draw.

First, this Court notes that A.R.S. Section 32-1456(A) is a regulatory statute governing medical assistants. That statute has no applicability to a forensic blood draw in a criminal case.[1]

Evidence was presented to the trial judge that a qualified individual performed the blood draw in this case. It is important to note that there is no question but that the blood draw was performed properly by someone who knew what (s)he was doing, who had experience, and that no physical harm was caused to the Appellee during the blood draw. The only question is whether the phlebotomist was supervised by a physician. The trial judge erred in finding that the phlebotomist was not a qualified individual within the meaning of applicable law.[2]

Most importantly, A.R.S. Section 28-1388(A) provides in the second sentence of the section:

> The qualifications of the individual withdrawing the blood and the method used to

[1] State of Arizona ex rel. Pennartz v. Olcavage, 200 Ariz. 582, 30 P.3d 649 (App.2001).
[2] A.R.S. Section 28-1388(A); State v. Nihiser, 191 Ariz. 199, 953 P.2d 1252 (App. 1997).

> withdraw the blood are not foundational prerequisites for the admissibility of a blood-alcohol content determination made pursuant to this subsection.

Appellee and the trial Court seem to have ignored the second sentence of this statute as quoted above. Clearly, our legislature has provided that the qualifications of the individual or phlebotomist withdrawing the blood are not foundational prerequisites for the admissibility of the alcohol content of the blood. There is no statutory or constitutional right to have a medical assistant or phlebotomist supervised by a physician perform a blood draw under either Arizona law or Federal law.

Appellee's complaints regarding the phlebotomist are, therefore, without merit. The trial judge erred in granting the Motion to Suppress for the reasons that the qualifications of the person making the blood draw are not prerequisites to the admissibility of the results of the blood draw.

IT IS THEREFORE ORDERED reversing the trial court that granted Appellee's Motion to Suppress.

IT IS FURTHER ORDERED remanding this case back to the Scottsdale City Court for all future proceedings consistent with this opinion including a trial on the merits of the complaint filed.